



**ARIZONA SUPREME COURT  
ORAL ARGUMENT CASE SUMMARY**

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**BILL AND SUE BEVERAGE v. PULLMAN & COMLEY, LLC;  
AND D. ROBERT MORRIS  
CV-13-0170-PR**

**PARTIES:**

*Petitioners:* Pullman & Comley, LLC; D. Robert Morris.

*Respondent:* Bill and Sue Beverage.

**FACTS:**

This is an appeal from a trial court order dismissing claims based on a finding by the trial court that it lacked personal jurisdiction over the defendants, a Connecticut law firm and an individual lawyer at the firm. On appeal, the Arizona Court of Appeals reversed the trial court's ruling and found that Arizona courts do have specific jurisdiction over these out-of-state defendants. Defendants filed a petition for review, asking the Arizona Supreme Court to review the Court of Appeals' decision. The Arizona Supreme Court granted review. Below are the facts, as set out in the Court of Appeals' Opinion at paragraphs 2-6.

Bill Beverage, an Arizona resident, heard from his local accountant, Randy Fitzpatrick, of an opportunity to invest in a tax shelter promoted by Chenery Associates, a financial services firm. [Footnote omitted.] In mid-December 2001, Fitzpatrick, as Beverage's agent, and Chenery employees telephoned D. Robert Morris, managing partner of Pullman & Comley, LLC, a Connecticut law firm, to discuss whether Pullman would issue an opinion letter to Beverage supporting the tax shelter.

Pullman is a law firm organized and located in Connecticut, without an office in Arizona or any attorneys licensed to practice in Arizona. By Morris's account, he told Fitzpatrick and the others on the December 2001 call that "Pullman would be interested in providing an opinion letter," but could not commit without completing its research into the matter. One week later, Morris sent to Fitzpatrick in Arizona a letter enclosing Pullman's brochure and stating, "I look forward to working with you."

Beverage completed the tax shelter transaction in late December 2001. In an affidavit, he averred he entered the transaction "in reliance on my understanding that [it] was a legal and legitimate business deal and that a favorable tax opinion letter would be forthcoming." Morris spoke by telephone with Fitzpatrick twice in mid-March 2002 about "the factual assumptions underlying Pullman's opinion letter." In early April, Morris sent Fitzpatrick a client representation letter for

Beverage to sign. The letter formalized the attorney-client relationship between Pullman and Beverage for preparation of a tax opinion letter in consideration of a \$50,000 fee. Beverage executed the representation letter and sent the law firm a check for \$50,000.

The 58-page opinion letter was drafted in Connecticut by lawyers who are not admitted to practice in Arizona. Once Morris received Beverage's signed representation letter on April 12, he forwarded the opinion letter to Fitzpatrick. The opinion letter, addressed to Beverage, concluded the tax shelter was legal and legitimate under federal tax law. In reliance on the letter, Beverage and his wife declared substantial losses related to the tax shelter on their federal income tax return.

One year later, the Internal Revenue Service audited the Beverages; Morris spoke with Fitzpatrick twice by phone about the audit. The government ultimately disallowed the tax losses the Beverages had claimed. The Beverages incurred substantial legal fees during the audit and, in the end, were assessed deficiencies totaling more than \$3,000,000. The Beverages filed suit in Arizona against Pullman and Morris (collectively, "Pullman Defendants") and Fitzpatrick's firm, asserting claims of civil racketeering, fraud in various forms, breach of fiduciary duty, aiding and abetting fraud and breach of fiduciary duty, conspiracy, professional malpractice and negligent misrepresentation. The Pullman Defendants moved to dismiss for lack of personal jurisdiction. Over the Beverages' opposition, the superior court granted the motion.

As noted above, the court of appeals reversed the trial court's ruling.

## **ISSUES:**

An Arizona resident contacts an out-of state vendor or service provider and asks to purchase a good or service. The out-of-state party agrees to enter into a single business transaction with the Arizona resident. The transaction has no connection to Arizona other than the location of the customer's residence. May Arizona courts exercise personal jurisdiction over the out-of-state vendor or service provider based on that single transaction.

## **DEFINITIONS:**

**Jurisdiction** is the legal right or power by which judges exercise their authority. Where the question is whether a particular court has jurisdiction over a particular party, such as a defendant who does not reside in Arizona, there are two broad types of jurisdiction.

**General jurisdiction** refers to power over an out-of state litigant who does business in Arizona on a regular basis, or has repeated contacts with the State.

**Specific jurisdiction** applies when the state lacks general jurisdiction over a litigant, but

has specific jurisdiction to decide a particular case that arises out of something that the litigant has caused to happen in Arizona. In order for specific jurisdiction to arise, the litigant must have “minimum contacts” with the state such that the litigant “might reasonably expect to be haled into court here.”

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